

SCHWAB AGREES TO RECEIVER

BUT SHIPBUILDING SUITORS ARE AFTER HIM YET.

They Ask Court to Make Him Party Defendant and Charge Fraud and Conspiracy to Wreck the Company—Fight On in New Jersey Over New Questions.

When the bondholders' suit against the United States Shipbuilding Company came before Federal Judge Kirkpatrick in Newark yesterday, William D. Guthrie sprang a surprise by admitting that the company was hopelessly insolvent and by asking that the receivership be made permanent in order to protect the bondholders.

Mr. Guthrie, who has represented the company in its fight against the receivership, also has been Mr. Schwab's counsel, contending that by making this admission he had removed the necessity for taking further testimony, the relief prayed for by the complainants having been conceded.

Lawyer Samuel Untermyer, for the complainants, to whom the move was a great surprise, at once disputed this contention and, in his argument, showed that the purpose of his clients was not only to secure the appointment of a permanent receiver, but also to prove a charge of fraud and conspiracy to wreck the company which would entitle them to judgment against Charles M. Schwab personally.

Mr. Untermyer asked the Court to make Mr. Schwab a defendant in the suit. This, he asserted, would enable the complainants to continue Mr. Schwab's examination and that of his friends to ascertain his exact connection with the three different companies. Mr. Schwab was on the stand at the last hearing of the case before Examiner Oliphant in this city. The sudden halt that was called in Mr. Schwab's examination was due to an application by Mr. Guthrie to have the taking of testimony transferred directly to Judge Kirkpatrick's court on account of "disorderly scenes" at the hearing before the examiner. It was this motion that brought the lawyers concerned in the case, including Max Pam, before Judge Kirkpatrick yesterday morning.

Mr. Untermyer moved that one side or the other before the Judge when the case was taken up. Argument was heard on three of these yesterday the others being deferred until Monday at Trenton.

Mr. Untermyer moved that the Court direct Mr. Schwab to answer questions about the United States Steel Corporation, and also that the three different companies, the company of the Mercantile Trust Company, the New York Security and Trust Company and the bondholders, be joined and tried together.

Mr. Guthrie admitted that the company was insolvent. Since making his original answer, he said, the company had paid its debts and had defaulted on its mortgage bonds. This concession, he said, would dispose of all other motions. When Mr. Untermyer asked if he thought it would put a stop to the proceedings, Mr. Guthrie said he did. In some of the moving papers he said Mr. Schwab and the company had been criticised for continuing the litigation.

"Now," said he, "we are prepared to come before the Court and disclose the fact that the company is insolvent and say that for the protection of the bondholders a receiver should be made permanent to liquidate its affairs. If we are in error on the ground of this complaint, if it is suggested that it is an action for the purpose of wrecking the company, Mr. Schwab, who is not a party defendant, we could take testimony till doomsday without result."

Judge Kirkpatrick remarked that the charge of fraud had been made only as the ground for the appointment of a receiver, and added:

"I held that the directors abdicated their authority by refusing to meet, because I believe it was said, Mr. Schwab told them not to."

Mr. Untermyer admitted that in one way this concession gave all the relief asked for. "But," said he, "this matter has a broader scope. It is a conspiracy to wreck the company. The Court of Appeals held that we had a right to show this."

The bill not only charges the company with being insolvent, but charges that that insolvency was due to the misconduct of directors and breach of trust. The whole of the company's affairs for the last six months, it was organized pursuant to a fraudulent conspiracy of Mr. Schwab and its officers, by which the Bethlehem Steel Company was induced to sell its stock at a price and for the purpose of wrecking the company, the interest was to be deliberately defaulted on the bonds given to Mr. Schwab—all of this is a personal judgment against Mr. Schwab."

Mr. Untermyer went on to say that the complainants not only wanted a receiver, but also wanted the Court to declare the company insolvent, to marshal its assets, determine its liabilities and the validity of its mortgages and have it administered as one of the receiverships. He said, to have suits "all over the face of the earth."

He admitted that there was nothing to do with the defendant's confession of insolvency, but to add an interlocutory decree for a permanent receiver, and contended that this did not interfere with the motion to make Mr. Schwab a party defendant, and the Court not to enter the decree until further procedure was had. Mr. Untermyer quoted at length from Federal decisions in precedent cases, and then proceeded to argue to draw into itself all the issues.

Referring to the testimony taken, he said that Mr. Schwab had sworn he was defending the suit in his own expense and that he was employing Mr. Guthrie, who was also defending the company.

"Do you challenge my right to represent the company?" asked Mr. Guthrie, who was appointed by resolution of the directors.

"It appears," replied Mr. Untermyer, "that Mr. Schwab conspired with Pennell, who passed that resolution. It further appears that Mr. Schwab swears that he is paying the expenses. He is the real defendant. We are not here to lay traps, but to get at the truth of—was going to say this miserable affair. If Mr. Schwab has done wrong, he must take the consequences, but we say, however, that he should be judged at the proper time."

Judge Kirkpatrick asked Mr. Guthrie if Mr. Schwab, who conspired with Pennell, would appear in New Jersey voluntarily.

"I will not," said Mr. Guthrie. "He will meet these questions in due course. He will appear only to deny to the jurisdiction of this Court, should the Court hold against him."

"I understand then," continued Judge Kirkpatrick, "that if the Court decides against him and appeal is taken and the decision is upheld, Mr. Guthrie will not bind himself that Mr. Schwab will be here?"

Mr. Guthrie said he would not so bind himself. It was then agreed that the complainants should amend their bill by making Mr. Schwab a defendant, this to be their own risk of having jurisdiction ousted; that the shipbuilding company should file its amended answer, alleging insolvency and that the argument would be continued on the other motions at Trenton on Monday.

Should Judge Kirkpatrick then decide favorably on Mr. Untermyer's motion to continue the hearing, argument will be heard on the motion to compel Mr. Schwab to answer questions about the Steel Corporation and to have the hearing go on before the Judge in New Jersey.

Mr. Guthrie said that on the latter point the argument would be "too acrimonious and too painful" to be heard yesterday.

It was the general opinion that the move made yesterday would call off the hearing indefinitely. Mr. Schwab may, in the meantime go to Europe, where he said he was going when he got through testifying. Pending the hearing on Monday, it was agreed yesterday that no hearing in any suit should be held, including Mr. Schwab's foreclosure suit which Mr. Untermyer was to commence with the others and take to New Jersey.

The only papers filed yesterday were affidavits. One was by Charles C. Deming of Alexander & Green, describing the alleged "disorder" at the hearing, caused partly by the presence of twenty reporters and sketch artists, and stating that "bursts of laughter frequently discomfited counsel and witnesses."

The other affidavit was by Mr. Untermyer, denying Mr. Deming's allegations and saying that the "disorder" was caused by Mr. Guthrie's conduct "in insinuating, without cause and apparently for newspaper effect, that his adversaries had suppressed the newspapers with certain matter, when in truth and in fact his client had and has, I am informed and believe, in his regular employ a press agent, who has, from the beginning, been inspiring articles unfavorable to the complainants to prejudice their cause in the public judgment."

One result of making ex-Senator Smith's receivership permanent will undoubtedly be an action by the receiver to levy an assessment on the stock of the company, of which Mr. Schwab owns \$180,000. It will be followed, it was expected, by an attempt to place the Bethlehem Steel Company under a receiver, too. Receiver Smith has already asked for permission to sue Mr. Schwab for the stock he got.

THAT \$750,000 LOAN.
Harris, Gates & Co. Gives Its Version of One of Dresser's Transactions.

The answer of Harris, Gates & Co. to the suit brought by the Commonwealth Trust Company, formed by the Trust Company of the Republic to recover \$750,000 alleged to be due it from money deposited with the firm by D. Le Roy Dresser and used later as part of the working capital of the United States Shipbuilding Company, was given out yesterday by Hornblower, Byrne, Miller & Potter, counsel for the firm.

In their answer, they are furnished for the first time the firm's side of the transaction, which came to light first through the testimony of Lewis Nixon at the shipyard clearing.

This testimony was to the effect that, although the company stated to the Stock Exchange that it had \$4,000,000 working capital last fall, it did not have this until Mr. Dresser borrowed money on his and Nixon's notes. One of the loans was that of \$750,000, which was obtained from Harris, Gates & Co.

Mr. Dresser took \$750,000 from the trust company and deposited it with Harris, Gates & Co., according to the company, and when the trust company subsequently demanded it the firm informed the company that it had Mr. Dresser's note for that amount. Of the existence of this note up to that time the trust company said it had no knowledge.

In their answer, Harris, Gates & Co. hold that the whole transaction was authorized by the trust company, which was the firm's responsibility. The answer says that on Sept. 10 the firm received a letter signed "Trust Company of the Republic, Daniel LeRoy Dresser, president," authorizing the firm to loan \$750,000 to Dresser and Nixon on 20,000 shares of preferred shipbuilding stock and 10,000 common. With this they received the company's check on the Bank of the Manhattan Company for \$750,000 and a note signed by Dresser and Nixon. All of these documents are given in full in the answer.

The firm thereupon sent its check for \$750,000 to the trust company, making it payable to Dresser and Nixon. This check, it is asserted, was received by the trust company for deposit. The indorsement read: "For credit Lewis Nixon and Daniel LeRoy Dresser, indorsement guaranteed, Trust Company of the Republic."

On Sept. 16, the answer says, the trust company drew a check for \$750,000, payable to the firm, which the firm deposited, returning the note and stock held as collateral. This was accepted by the trust company, the answer holds, as a complete discharge and satisfaction of all obligations.

It is further alleged that the Sheldon syndicate helped the trust company out by lending it \$425,000 in return for the trust company's stock and bonds, and that it was agreed that this money would be applied to all notes made by Nixon and Dresser, which would also dispose of the claim made by Harris, Gates & Co. being members of this syndicate.

The answer alleges that the reason for the transaction, which it holds was made by the trust company and planned to furnish to or apply to the use of the Shipbuilding Company in ferry, of \$250,000, but desired, for reasons unknown to the firm, that such loan or advance should be represented by bills receivable instead of a direct loan.

CAR OVERHUNG THE STREET.
Mistake in Signals Placed Elevated Passengers in Peril.

Because of a mistake in signals a train of four cars and an elevated car on the Broadway elevated railroad, in Brooklyn, crashed broadside into a similar train of the Lexington avenue branch at Broadway and Gates avenue on Tuesday night. But for a stout iron guard rail the train that was run into, with its living freight, would have dropped to the street.

The Lexington avenue train had the right of way and was going to the Bridge. The other train was on a siding between the two tracks. It had been ordered to go in ferry, of \$250,000, but desired, for reasons unknown to the firm, that such loan or advance should be represented by bills receivable instead of a direct loan.

The locomotive of the Broadway train crossed the switch and was just passing to the down track when the Lexington avenue train dashed across. The engine of the Broadway train struck the second car, which crashed broadside into the iron guard and hung by its wheels to the street. A large piece struck Isaac Walsh of 118 Eldert street, causing a scalp wound.

As the crash came, the third rail was a continuous spattering of blue flame shot out.

Word of the accident was immediately sent to the Rapid Transit Police station and the reserves were turned out. Meanwhile employees of the road got stout ropes and made fast the overhanging car. The road was blocked for nearly two hours.

LOWELL FIRES INCENDIARY?
Three Large Blazes in a Few Days and None of Them Explained.

LOWELL, Mass., Jan. 13.—The police and the fire marshal today began an investigation of the three large fires that have occurred in the large department store of O'Donnell & Gilbridge and adjoining property here. There is an impression that the fire was the work of an incendiary.

On Monday morning St. Patrick's Church was burned. On Saturday morning a fire started in Odd Fellows' Hall and some time ago a big fire broke out in Davis & Sargent's building. None of these fires has been explained.

Last night's fire was the third great fire in a week and the largest which has ever occurred in the business part of the city. Four city blocks were destroyed, involving a loss of fully \$300,000.

Steamship Stranded Twice Near Key West.

KEY WEST, Fla., Jan. 13.—The British steamship *Sorle*, Capt. Eggart, loaded with phosphate, from Port Tampa and bound for Europe by way of New Orleans, ran ashore yesterday on the beach of Key West, about forty miles west of Key West, to-day. Wreckers went out to her and floated her at once. The heavy wind drove her ashore again. Wreckers are now taking her cargo and she will probably be floated soon.

THE WALKING DELEGATE DON.

MORE EVIDENCE AS TO HIS GREAT USEFULNESS IN TRADE.

Operations in the Stone Cutting Business Frankly Described by Collector Nelson of the Union, Who Used the Strike Club Often—The Hearing Ended.

It will be ten days or two weeks before Magistrate Ommen decides whether criminal prosecutions shall arise out of the agreement between the Employing Stone Cutters' Association and the Journeymen Stone Cutters' Union. The preliminary hearing practically closed yesterday.

One more perfunctory session will be held on Friday afternoon, when Mr. Hutchinson, the treasurer of the Employing Stone Cutters' Association will present his case. He will show just how much in 10 per cent. assessments on contracts were paid in under the rules by the thirty members who made up the association. Mr. Hutchinson swore yesterday that he only had \$200 of the association funds in his possession now, and that the most he had ever had was \$4,500.

As representing 10 per cent. on the total contracts of thirty stone dealers during a period of nine months, Magistrate Ommen and Mr. Iselin both thought this amount so small that the Court directed that Mr. Hutchinson produce the books and verify his figures.

Still more testimony as to the collection of old debts by walking delegates under threat of strikes against debtors came out yesterday. It developed from the answers of several witnesses that this method of debt collecting has been in vogue in several branches of trade for some time. It also appeared that the percentages paid to the walking delegates for such collection were exceedingly liberal, ranging from 10 to 25 per cent.

Mr. Hutchinson, the treasurer of the association, was asked to testify that he paid \$50 to three walking delegates for the collection of a bill of \$2,010, or nearly 25 per cent. of the total amount of the claim.

Members of the association made poor headway in endeavoring to establish its entire disassociation with debt collecting by walking delegates. Mr. Hutchinson, the treasurer of the association, was asked to testify that he paid \$50 to three walking delegates for the collection of a bill of \$2,010, or nearly 25 per cent. of the total amount of the claim.

Mr. Iselin showed him the printed form of the agreement between the Employing Stone Cutters' Association and the Journeymen Stone Cutters' Union, which he had never heard of such collections, but there were a number of other things of quite common notoriety in connection with the association about which he displayed a surprising ignorance. For instance, he testified that he did not know of any agreement between the association and the stone cutters' union, that he never heard of such an agreement.

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THE EMPLOYING STONECUTTERS' ASSOCIATION.

"Yes," answered the witness. "I spoke of it, and the president said I ought to have it put in the record. I did not do so."

ing of the Employing Stonecutters' Association?" asked Mr. Iselin.

"Yes," answered the witness. "I spoke of it, and the president said I ought to have it put in the record. I did not do so."

Jerome A. Jackson, a member of the stonecutters' association, was questioned closely as to the clearing committee, which decided who was to have a contract after averaging the bids.

"Was the object of that," asked the Magistrate, "to stifle competition, so far as the owner or architect was concerned?"

"We thought it about time," replied the witness, "competition of that kind was eliminated."

Edward F. Giberson, manager of the Bradley concern, told again how his shop and been closed at least once because he would not join the Employing Stonecutters' Association. He testified that he would not join because he had been advised by his counsel that the association was illegal.

Mr. Giberson said he was now running a non-union shop and had all the men he wanted—about twenty-five or thirty. If he started a union he would have to employ forty-eight stonecutters, he said.

Cross-examined, Mr. Giberson denied that he had offered Donald Call \$150 a day for three years for a certain privilege. Call then testified that Mr. Giberson had made this offer if he would permit the violation of a union rule by letting a certain man work in a certain place. Call said he got \$5 a day. Call said he had told Giberson that if he, Call, got the \$5 a day and the other man \$150 he might consider it. Call also testified that Giberson had offered him a suit of clothes if he would give him good planning men instead of the poor ones he then had. Call said he gave Giberson the good men, but refused the clothes.

TO PROTEST AGAINST WRIGHT.
Miners Decide to Ask Judge Gray Not to Make Him Umpire Any More.

TAMAGUA, Pa., Jan. 13.—At to-day's session of the annual convention of the Seventh district of the United Mine Workers Carroll D. Wright, the umpire appointed to render decisions on questions on which the conciliation board is deadlocked, was condemned for ruling against the miners in a case in which the miners were in the wrong. It was decided that the miners should make a personal appeal to Judge Gray not to appoint Mr. Wright to serve as umpire in future disputes.

TO FIGHT UNION LABOR.
Pennsylvania Builders Meet to Form a State Organization.

SCRANTON, Pa., Jan. 13.—For the purpose of fighting the labor unions the Pennsylvania State Builders' Exchange are now holding their convention in this city. There are nearly a hundred delegates in attendance. The day was taken up largely with a discussion of amendments to the constitution and by-laws. Provisions are to be made whereby in a case of a strike in one town the affected men cannot go to another place and secure work.

Car and Foundry Co. Cuts Wages.
St. Louis, Mo., Jan. 13.—A 10 per cent. reduction has been made in the wages of the employees of the American Car and Foundry Company. About 5,000 men are affected. The company's headquarters are in St. Louis, but there are fifteen plants scattered about the country.

END OF AQUEDUCT HEARINGS.
They Have Been Costly and Probably Fruitless—Contractors to Be Upheld.

The Aqueduct Commission's investigation of the Merchants' Association charges that the work of Contractors McDonald and O'Donnell on the Jerome Park reservoir has been unduly delayed and faultily done ended yesterday so far as the taking of testimony is concerned. The hearings have been costly and the inquiry will probably amount to nothing.

Mr. Bryn Mawr, who presided over the commission, will decide in favor of the contractors. If the commission decides to pay the \$200,000 the contractors have asked out of the town reserve fund the association can only seek an injunction from the courts.

Testimony heard yesterday brought out nothing new. Both sides will now submit briefs.

BIG WATER BY MONMOUTH JURY.
Water Company Didn't Furnish Enough Water to Put Out Lumber Company's Fire.

FREMONT, N. J., Jan. 13.—A verdict for the largest amount ever awarded in an ordinary civil suit in any of the law courts in this section of the State was rendered here by a jury to-day in favor of the Buchanan and Smock Lumber Company of Asbury Park against the East Jersey Water Company of Camden, N. J.

The verdict is for \$31,000 for the failure of the water company to furnish water from its hydrants at a fire in the yards of the lumber company on October 19, 1902. The total loss claimed by the lumber company was \$42,000. The water company will appeal. It is said that should the company be compelled eventually to pay to the plaintiff it may be forced into liquidation.

CARRIED CHILDREN FROM FIRE.
Policeman Saves Woman, Too, Who Fought Him, Thinking He Was a Kidnapper.

A fire broke out yesterday morning in the drygoods store of Barney Barko, 305 Columbia street, Brooklyn, while the proprietor, his wife and two young children were asleep on the second floor.

Policeman Patrick Shea of the Hamilton avenue station aroused the family and carried the children to the street, followed by the parents. Then, hurrying upstairs to the second floor, he found the woman and her two children in a room in which Mrs. Annie Olsen was still asleep, and aroused her. The woman became hysterical and, imagining she was being kidnapped, fought her way down the stairs. She was almost exhausted when they reached the sidewalk, the woman requiring police aid to get to her feet.

The fire caused a loss of \$2,500.

NEWSPAPERS WANTED.
Also Books and Magazines and Money, All for the Hospitals.

The Hospital Book and Newspaper Society, organized twenty-nine years ago to collect reading matter from the public and distribute it to the inmates of hospitals and asylums, makes an urgent appeal in a recent number of walking delegates in all lines of trade to collect debts of employers under penalty of strikes.

Is there any committee to investigate the justice of the debt? asked the Magistrate.

"My understanding is that there is generally an investigation by the walking delegates," replied the witness.

"You don't wait, I suppose," continued the Magistrate, "for a judgment to be entered against the debtor?"

"I believe in the cases that I have heard of," replied the witness, "judgments had been entered."

William F. Cosgrove, an employing stonecutter, testified that he had a claim for \$2,010 against Jacob A. Zimmerman of the Bristol Hotel for work done. He sent the bill to Zimmerman, who offered to pay about a quarter of the amount demanded. A journeyman stonecutter asked Cosgrove why he did not turn the bill over to the union for collection and Cosgrove did so. He had dealings with three walking delegates in the matter—Carvel, Ainslow and McGovern. They brought him offers of compromise from Zimmerman, but he refused them. Then the walking delegates brought him Zimmerman's check for the full amount of the debt and he gave them his personal check for \$510 for their services. The check was drawn payable to bearer.

IF YOU'RE HUNGRY, ALMOST ANYTHING TO EAT TASTES GOOD.

If you're not—nothing does. GOLD LION Cocktails make you hungry. GOLD LION Cocktails (ready to ice) never vary.

GOLD LION Cocktails—Seven kinds—Manhattan, Vermouth, Whiskey, Martini, Tom Gin, Dry Gin and the American.

Of good wine merchants. The Cook & Bernheimer Co.

HANNA CHOSEN FORMALLY.
Says the Recent Ohio Election Was a Death Blow to Modern Socialism.

COLUMBUS, Ohio, Jan. 13.—In joint session at 12 o'clock to-day Marcus A. Hanna was chosen formally as his own successor in the Senate of the United States by the Ohio Legislature. Mr. Hanna was escorted to the House of Representatives together